

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

SEP 30 2009

**Clerk, U.S. District and
Bankruptcy Courts**

PUBLIC EMPLOYEES FOR ENVIRONMENTAL)
RESPONSIBILITY,)
2000 P Street, NW Suite 240)
Washington, D.C. 20036)
)
Plaintiff,)

v.

U.S. DEPARTMENT OF THE INTERIOR)
OFFICE OF INSPECTOR GENERAL)
1849 C Street, NW)
MS-7456)
Washington, D.C. 20240)
)
Defendant.)

Case: 1:09-cv-01862
Assigned To : Collyer, Rosemary M.
Assign. Date : 9/30/2009
Description: FOIA/Privacy Act

COMPLAINT

PRELIMINARY STATEMENT

1. This action is brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, as amended, in order to compel the U.S. Department of the Interior ("DOI") to disclose records withheld wrongfully after a FOIA request and subsequent appeal from Plaintiff. FOIA requires that federal agencies respond to public requests for documents, including files maintained electronically, in order to increase public understanding of the workings of government and access to government information.

2. Plaintiff Public Employees for Environmental Responsibility (“PEER”) is a non-profit organization with tax-exempt status dedicated to research and public education concerning the activities and operations of the federal government. Plaintiff requested the subject records in order to learn about an investigation that took place at Hubbell Trading Post.
3. On June 15, 2009, Plaintiff submitted a Freedom of Information Act request to the DOI Office of Inspector General (“OIG”) requesting records relating to an investigation relating to the Hubbell Trading Post. DOI failed to acknowledge receipt of the FOIA request. On, July 16, after the statutory period for responding to the FOIA request had elapsed, Plaintiff filed an administrative appeal of the constructive denial. On September 3, 2009, DOI acknowledged that it had not responded to the appeal due to “an extraordinarily large number of appeals pending in the Department.”
4. DOI’s conduct is arbitrary and capricious and amounts to a denial of Plaintiff’s FOIA request. DOI’s conduct frustrates Plaintiff’s efforts to educate the public regarding ongoing activities at DOI and is a violation of the FOIA.
5. Plaintiff seeks a court order requiring DOI to produce immediately the documents sought in the June 15, 2009 FOIA request, as well as other appropriate relief.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).
7. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
8. This Court has the authority to award costs and attorneys' fees under 28 U.S.C. § 2414 and 5 U.S.C. § 552(a)(4)(E).
9. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e), because the Defendant resides in this district and a substantial part of the events and omissions which gave rise to this action occurred in this district. Venue is also proper under 5 U.S.C. § 552(a)(4)(B).

PARTIES

10. Plaintiff PEER is a non-profit public interest organization, with its main office located Washington, D.C., and field offices located in California, Colorado, Florida, , Massachusetts, New Mexico, New York, and Tennessee.
11. PEER is not a commercial enterprise for purposes of the fee waiver provisions of FOIA. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Among other public interest projects, PEER engages in advocacy, research, education, and litigation relating to the promotion of public understanding and debate concerning key current public policy issues, focusing on the

environment, public lands and natural resource management, public funding of environmental and natural resource agencies, and ethics in government.

12. Informing the public about these important public policy issues is central to PEER's mission. PEER educates and informs the public through news releases to the media, PEER's web site www.peer.org, which draws between 1,000 and 10,000 viewers per day, and PEER's newsletter which has a circulation of approximately 20,000, including 1,500 environmental journalists.
13. Defendant DOI is an agency of the United States as defined by 5 U.S.C. § 552(f)(1), and is charged with the duty to provide public access to documents in its possession consistent with the requirements of the FOIA and is denying Plaintiff access to its records in contravention of federal law.

FACTS

14. On June 15, 2009, Plaintiff submitted a Freedom of Information Act request to the DOI OIG requesting records relating to the Hubbell Trading Post investigation. Specifically, Plaintiff requested the following: (1) Case DOI-OIG report #PI-PI-07-0054-I prepared and submitted by OIG Special Agent Paul Okerberg, assisted by OIG Special Agent Dave Bodge; (2) NPS/IMDE Case #04-008 AKA "U.S. v. Billy Gene Malone" or "The Hubbell Case" (which is included as an attachment or appendix to #1, above), including the 83 page narrative report and 25 separate multi-page exhibits to this report; (3) All support documents, correspondence (including e-mails), and electronic files obtained by the OIG as part of its investigation; (4) All reports and/or memoranda of interview (MOI)

documenting contacts with all witnesses or subjects interviewed in the course of the investigation; (5) All documents scanned into the electronic case file for DOI-OIG Case file PI-PI-07-0054-I in the course of and/or part of the investigation, including but not limited to reports, evidence sheets, photographs, and emails sent and received by the OIG, including information indicating the date each was prepared, submitted and/or approved; (6) Reports and memoranda prepared by other OIG personnel in support of the investigation; (7) Cover/transmittal memoranda or other communications with the Office of the United States Attorney; and (8) Correspondence between the National Park Service (NPS) and the OIG pertaining to the investigation and related reports, including, but not limited to, any comments offered by NPS officials to the OIG about its report and investigation, and any reciprocal communications by OIG.

15. DOI failed to acknowledged receipt of or respond to Plaintiff's FOIA request.
16. On July 16, 2009, Plaintiff filed an administrative appeal of DOI's constructive denial of its FOIA request.
17. DOI did not send an acknowledgement, respond to, or provide the request documents to Plaintiff's July 6, 2009 appeal in the statutory time required.
18. In a letter dated September 3, 2009, DOI stated that it needed additional time due to "an extraordinarily large number of appeals pending in the Department."
19. To date, DOI has still not responded to the FOIA request or appeal. In doing so, DOI has failed to meet the twenty (20) day limit imposed by FOIA for responding to an appeal. *See* 5 U.S.C. § 552(a)(6)(A)(ii).

20. Plaintiff has fully exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C) for its FOIA request, and now turns to this Court to enforce the remedies and public access to agency records guaranteed by FOIA.

CAUSES OF ACTION

Count I: Violation of the Freedom of Information Act

21. Plaintiff repeats the allegations in paragraphs 1 through 20.
22. Plaintiff would draw attention to the January 21, 2009 memo by President Barack Obama declaring the following policy: “The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.”
23. DOI’s failure to disclose the requested documents is a violation of FOIA, 5 U.S.C. § 552, and the agency’s own regulations promulgated thereunder.

Count II: Violation of the Administrative Procedure Act

24. Plaintiff repeats the allegations in paragraphs 1 through 20.

25. DOI's failure to respond to Plaintiff's request constitutes an agency action of unlawful withholding and unreasonably delay, in violation of the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706. DOI's failure in this matter is arbitrary, capricious, an abuse of discretion, not in accordance with the law and without observance of procedure required by law, all in violation of the APA.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests and prays that this Court:

- i. Enter an Order declaring that DOI has wrongfully withheld the requested agency records;
- ii. Issue a permanent injunction directing DOI to disclose to Plaintiff all wrongfully withheld documents;
- iii. Maintain jurisdiction over this action until DOI is in compliance with FOIA, APA and every order of this Court;
- iv. Enter an Order declaring that Plaintiff is entitled to a full fee waiver under 5 U.S.C. § 552 (a)(4)(A)(iii) for both of Plaintiff's FOIA requests to the extent that DOI does not provide a full fee waiver for both of Plaintiff's requests;
- v. Award Plaintiff its attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
- vi. Grant such additional and further relief to which Plaintiff may be entitled.

Dated: September 30, 2009

Respectfully submitted,

Paula Deneviera ✓

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Senior Counsel

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